

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6265 of 1999
with
SPECIAL CIVIL APPLICATION No. 5111 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN

Versus

KRISHNAKANT C DAVE

Appearance:

MR HS MUNSHAW for Petitioner
MR AD OZA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR PREMAL JOSHI AGP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/06/2000

COMMON JUDGEMENT

Heard the learned advocates.

2. Both these petitions involve identical question of law. With the consent of the learned advocates, these petitions are finally disposed of by this common judgment and order.

3. The petitioner in Special Civil Application No. 5111 of 2000 and the respondent no. 1 in Special Civil Application No. 6265 of 1999 are the qualified Doctors appointed as Teachers in Smt. NHL Municipal Medical College which is run and managed by the Ahmedabad Municipal Corporation [hereinafter referred to as, 'the Corporation']. The college is affiliated to the Gujarat University. The controversy in these two petitions relate to the age of superannuation of the teachers in the Medical Colleges. Smt. NHL Municipal Medical College is run and managed by the Corporation from its own funds. Section 457 of the Bombay Provincial Municipal Corporations Act, 1949 empowers the Corporation inter alia to provide for or regulate the qualifications necessary for and the method of appointment to the posts, the power of appointment to which vests in the Corporation. Section 465 enjoins upon the Standing Committee to frame regulations not inconsistent with the Act and the Rules but in consonance with any resolution that may be passed by the Corporation inter alia to prescribe the qualifications required for appointments to posts in the Municipal Service other than those specified in sub-clause (a) of Clause 3 of Section 457 and for regulating the period of service of all those officers and servants. Under the aforesaid powers conferred upon the Standing Committee, the then Administrator had on 17th June, 1985 passed Resolution no. 740. Under the said Resolution, the age of superannuation of the teachers in Smt. NHL Municipal Medical College was raised to 60 years in consonance with the Ordinance No. 172 of the Gujarat University. The Standing Committee in its meeting held on 20th June, 1995 ratified the above Resolution no. 740 passed by the Administrator. Since then, the age of superannuation for the Teachers in the Municipal Medical College is 60 years.

It appears that in the year 1998 or thereabout, the University Grants Commission [hereinafter referred to as, 'the UGC'], with a view to attracting and retaining the talent in teaching profession, recommended a Scheme of revised pay scale under which the pay of the teachers in the Universities and Colleges affiliated to the Universities were revised on conditions mentioned thereunder. The said recommendations made by the UGC has been accepted by the Government of India. Such

acceptance was communicated to the UGC by the Government of India in its Ministry of Human Resources Development [Department of Education] under its communication dated 27th July, 1998. By the said communication dated 27th July, 1998, the said ministry informed the University Grants Commission that the Government of India had decided to revise the pay scales of teachers in the Central Universities and that the revision of pay scales of teachers would be subject to various provisions of the scheme of revision of pay scales, as contained in the letter and the regulations to be framed by the UGC in that behalf. Clause-VI of paragraph 1 of the said scheme provides that the age of superannuation of University and College teachers would be 62 years and thereafter no extension in service should be given. Paragraph 3 thereof provides inter alia that the said scheme would be applicable to teachers in all the Central Universities and Colleges thereunder and the Deemed to be Universities whose maintenance expenditure is met by the UGC.

The said decision of the Central Government has been communicated to the State Governments also. The Central Government has sent the scheme of revision of pay scales to all the State Governments and Union Territories. The Governments were informed that the Central Government had decided to continue to provide financial assistance to the State Governments who wish to adopt and implement the scheme of revision of pay scales, subject to the terms and conditions mentioned therein. The said terms and conditions provide inter alia that, 'the payment of central assistance for implementation of the scheme is also subject to the condition that the entire scheme of revision of pay scales, together with all the conditions to be laid down in this regard by the UGC by way of regulations is implemented by the State Governments as a composite scheme without any modification, except the date of implementation and scales of pay as indicated'; 'the scheme applies to teachers in all Universities [excluding Agricultural Universities] and Colleges [excluding Agricultural, Medical and Veterinary Science Colleges] admitted to the privileges of the Universities.' Pursuant to the said advice, the State of Gujarat has accepted the scheme of revised pay scales and in conformation thereto, the Government of Gujarat has passed a Resolution on 7th September, 1998. Under the said Resolution, the Government of Gujarat has resolved that the recommendations of the Mehrotra Commission be accepted and the pay of the teachers, librarians and physical education personnels be revised as prescribed therein. The State Government has also accepted the recommendation

that the age of superannuation of University & College teachers would be 62 years. Paragraph 3 thereof provides that the said scheme shall be applicable to the teachers in all the State Universities and Colleges thereunder and the Deemed to be Universities whose maintenance is met by the UGC. The Universities were accordingly advised to amend their statutes and ordinance in light with the regulation. Pursuant to the said Resolution, the University has amended its Ordinance No. 172. Accordingly, the age of superannuation of College teachers has been enhanced to 62 years.

Both the teachers have relied upon the aforesaid Government Resolution dated 7th September, 1998 and has claimed that their age of retirement shall also be 62 years and not 60 years, as determined by the Government. It is submitted that the Municipal Medical College is affiliated to the Gujarat University and the conditions of affiliation require that such colleges shall be governed by the provisions made by the University. The Municipal Medical College being an affiliated college, the service conditions of the teachers there should be governed by the University's statutes and ordinances. Both the teachers, therefore, irrespective of the rules of the Corporation, are entitled to continue in service till they attain the age of 62 years in accordance with the Resolution dated 7th September, 1998 and the Ordinance No. 172 of the University.

7.7.2000

Learned advocate Mr. Dave has relied upon the judgment of this Court in the matter of S.R Bhatt v. Gujarat University [Special Civil Application No. 481 of 1978 : Decided by Mr. Justice S.H Sheth on 30th March, 1978] and of Ishwarbhai T. Patel v. State of Gujarat & Ors., [1990 (2) GLH (UJ) 8]. Mr. Dave has relied upon the communication dated 2nd November, 1998 issued by the University. He has also relied upon Sections 11, 20 and 33 of the Gujarat University Act, 1949 [hereinafter referred to as, 'the Act'] and Ordinance 172 of the University. The above communication dated 2nd November, 1998 has been issued under the instructions of the Vice Chancellor of the University. It is addressed to the Principals of the Affiliated Colleges and the Heads of the recognized Institutions and the Chief Accounts Officers. Under the said communication, the Principals of the affiliated Colleges and Heads of the recognized Institutions have been instructed to confer the benefit of revised pay scales under the Government Resolution dated 7th September, 1998 upon the teachers, librarians

and the Physical Education personnels of such colleges. Section 11 of the Act deals with the powers of the Vice Chancellor. Sub-section 4 (a) thereof reads as under :

`4(a) In any emergency which, in the opinion of the Vice-Chancellor requires that immediate action should be taken, he shall take such action as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary course dealt with the matter.'

Thus, the above sub-section empowers the Vice Chancellor to take any action which in his opinion requires the immediate action to be taken. It also enjoins upon the Vice Chancellor to furnish information regarding such action to such officer, authority or body as would have in ordinary course dealt with the matter. It is submitted that the instructions dated 2nd November, 1998 had been issued by the Vice-Chancellor in exercise of the powers conferred under above referred sub-section 4 (a) of Section 11 of the Act. Section 20 of the Act deals with the powers and duties of the Executive Council. Clause xxxix of sub-section (1) thereof empowers the Executive Council to 'lay down and regulate the salary scales, allowances and conditions of service of the members of the teaching, other academic and non-teaching staff of affiliated colleges and recognized or approved institutions.' Sub-section (3-A) thereof makes the exercise of power under Clause (xxxix), in so far as it relates to the laying down and regulating salary scales and allowances of officers, members of the teaching, other academic and non-teaching staff of the University, affiliated Colleges and recognized or approved Institutions, subject to the approval of the State Government.

26.7.2000

Section 33 of the Act provides for affiliation of a College to the University. The said Section empowers the Executive Council to grant or to refuse affiliation in consultation with the Academic Council. Sub-section 5 thereof lays down inter alia the conditions of affiliation. It enjoins upon the affiliated colleges inter alia to fulfil the conditions mentioned thereunder. Clause (j) thereof provides that, 'the college shall comply with the statutes, Ordinances and regulations providing for conditions of service including salary

scales, and allowances of the teaching and other academic and non-teaching staff of the affiliated college.' Ordinance 172 as amended on 4th May, 2000 provides for the qualifications and recruitment of the teachers in the Colleges affiliated to the University; career advancement, age of retirement, etc. Paragraph 15 thereof reads as,

[1] 'The age of superannuation of the College teachers would be 62 years and thereafter, no extension in service should be given'.

[2] 'The date of superannuation shall be 31st October or 14th June of the year whichever comes earlier after the teacher attains the age of retirement.

However, this will not affect the provisions made and rules made for professional courses.'

In the matter of S.R Bhatt v. Gujarat University [Supra], the Principal of B.D Arts College, a non-Government Grant-in-Aid College affiliated to the University was given extension in service for five years on his attaining the age of 60 years, the age of superannuation. However, the Registrar of the University directed that Principal having attained the age of 60 years could not continue as the Principal of the College and that he would retire on the expiry of the Academic Year 1977-78. Upon examination of the facts, the Court found that the Principal was given extension in service after he attained the age of 60 years in violation of the resolution passed by the University in this regard. The defence that the University had no authority to interfere with the contract between the petitioner and the College management was also negatived. In answer to the said contention, the Court held that, 'the College is affiliated to the University. The University has statutory power to prescribe the age of superannuation for the members of the staff of the affiliated colleges. The University has laid down such service conditions. It is binding upon all the affiliated colleges. Having availed themselves with the affiliation with the University, it is not open either to the petitioner or for the college management to say that it is not bound by the service conditions laid down by the University in exercise of its statutory power in respect of the members of the staff of the affiliated colleges. If the University has power to lay down a service condition, it necessary follows therefor that it has inherent power to

enforce it.' In the matter of Ishwarbhai T. Patel v. State of Gujarat & Ors., [1990 (2) GLH (UJ) 18], the petitioner was seeking appointment to the post of Principal in C.U Shah Commerce College, a non-Government Grant-in-Aid College affiliated to the University. The petitioner was denied appointment on the ground that he did not possess the requisite qualification prescribed by the State Government under its resolution dated 24th October, 1989. Upon examination, it was found that though the petitioner was not eligible for appointment as Principal pursuant to the Government Resolution, he was eligible for such appointment under the rule framed by the University in the month of June, 1989 i.e. prior to the date of the Government Resolution. In the circumstances, the Court held that, 'the Government could not have intended to fix a different eligibility criterion and provide/prescribe qualification inconsistent with the qualifications prescribed by the University. In my opinion, the rule framed by the University and the resolution passed by the Government will have to be read harmoniously. Reading it harmoniously, it will not have to be held that the Government resolution dated 24th October, 1989 will apply to persons other than full-time or part-time Lecturers who were already in service and recognized as such on or before 15th October, 1988 by any University in the State.' In the matter of Thakorelal Pranlal [1994 (1) GLR 481], the question was in respect of service conditions i.e. the date of retirement of teachers in the Government Colleges. The Government insisted that the teachers in the Government Colleges are governed by the service conditions prescribed by the rules framed by the Government which require that a Government servant should retire from service on attaining the age of 58 years. However, the concerned teachers claimed that the Government Colleges are affiliated to the University and are bound by the Statute/Ordinance made by the University in exercise of the power conferred under Section 20 of the Act. The University having prescribed the age of superannuation of the teachers in the colleges affiliated to the University as that of 60 years, the teachers in the Government colleges also had a right to continue in service till they attain the age of 60 years. The contention was negatived by the learned Single Judge and was confirmed in Letters Patent Appeal. While confirming the decision of the learned Single Judge, the Division Bench observed that, '.....But the question that relevantly arises for our consideration is, is the Act a piece of legislation governing to regulate recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the

State. The Rules are those made under the Proviso to Art. 309 to regulate the recruitment and conditions of service of such persons. There is no dispute that the petitioners will fall within the category of such persons only. The Act, certainly, would not come within the purview of an Act to regulate the recruitment and conditions of service of such persons. We have no ambiguity in our mind that the Act is not a piece of legislation governing this subject, namely, State Public Services. The Act is one concerned with the subject of education including University. There is ample discussion in the order of the learned Single Judge and we fully endorse and adopt it. '

Mr. Dave has submitted that the Municipal Medical College being affiliated to the University is bound by the Statutes, Regulations, Ordinances, Resolutions made by the University in respect of the service conditions of the teaching staff of the affiliated colleges. In view of the Government Resolution dated 7th September, 1998 and the instructions issued by the Vice Chancellor on 2nd November, 1998 and the amended Ordinance 172 (15), the petitioners are entitled to continue in service till they attain the age of 62 years. As against that, Mr. Munshaw has submitted that the respondent is a Statutory Corporation and is empowered to make regulations governing the service conditions of its employees. The Resolution No. 740 passed by the Corporation is statutory in nature and shall prevail over the Statutes, Regulations, Ordinances or Resolutions made by the University. The service conditions of the employees of the Corporation having been specifically provided for under the specific orders made in exercise of the powers conferred under Section 457 of the Bombay Provincial Municipal Corporations Act, 1949 such conditions shall have a binding effect on the employees of the Corporation and no benefit can be claimed by such employees under the University Ordinance or the Government Resolution.

The question that arises is whether the service conditions of the teachers in the Municipal Medical College should be governed by the service conditions prescribed by the resolution of the Corporation or shall be governed by the Statutes, Regulations, Ordinances or Resolutions made by the University to which the College is affiliated.

Keeping in view the law laid down in the above referred judgments, I have no doubt that the Act being a piece of legislation, the service conditions determined

in exercise of powers conferred under Section 20 of the Act shall prevail over the terms and conditions of appointment of teachers in affiliated colleges unless such terms and conditions are governed by some statutory provisions made under the statutory powers conferred upon the employer. In the present case, the resolution passed by the Administrator and ratified by the Standing Committee cannot be said to be statutory in character which shall give it an overriding effect over the provisions made under Section 20 of the Act. In my view, therefore, the teachers in the Municipal Colleges affiliated to the University shall also be governed by the conditions of service determined under Section 20 of the Act. However, for the reasons recorded hereinafter, the service conditions of teachers in the Medical Colleges shall not be governed by either the Government Resolution dated 7th September, 1998 or the Ordinance 172 (15); as amended pursuant to the aforesaid Resolution dated 7th September, 1998.

It is required to be noticed that the recommendations made by the UGC were in respect of the revision of pay of the teachers and also in respect of the requisite qualifications and incentives for career advancements, etc. The recommendations made by the UGC were accepted by the Government of India in its Ministry of Human Resources Development [Education Department] and the acceptance was communicated by communication dated 27th July, 1998 referred to hereinabove. The said communication evidences that the the Government of India had decided to revise the pay scales of the teachers in the Central Universities and in the Colleges affiliated to the Central Universities. The revision of pay scales of teachers was made subject to various provisions of the scheme of revision of pay scales, as contained in the said letter and the regulations to be framed by the U.G.C. The Scheme of the revised pay scales was also sent to the Education Secretaries of the States and Union Territories. The Central Government also assured the financial assistance to the State Governments who wish to adopt and implement the scheme of revision of pay scales, subject to the terms and conditions contained therein. Paragraph 8 of the said communication specifically excludes the Agricultural Universities and Agricultural, Medical and Veterinary Science Colleges. The said scheme was thus made applicable to the teachers other than the teachers in the Agricultural Universities and the Agricultural, Medical and Veterinary Science Colleges. Paragraph 4 thereof enjoins upon the State Government to implement the scheme as a composite scheme without modification, except the date of implementation. It is

the said scheme which has been adopted by the State Government under its Resolution dated 7th September, 1998. The scheme which was accepted by the Central Government and for which the financial assistance was assured was in respect of the teachers in Colleges other than in the Agricultural University and in the Agricultural, Medical and Veterinary Science Colleges. In view of paragraph 4 of the communication dated 27th July, 1998 addressed to the Education Secretaries of the State Governments, referred to hereinabove, the Government could not have adopted the scheme of revision of pay scales beyond the scope circumscribed in the said communication dated 27th July, 1998. The Government Resolution dated 7th September, 1998, therefore, is required to be read in light of the instructions contained in the above referred communication dated 27th July, 1998. The scope of the Government Resolution dated 7th September, 1998, therefore, cannot be expanded so as to include the teachers in the Agricultural Universities and the Agricultural, Medical and Veterinary Science Colleges who are specifically excluded from the applicability of the scheme adopted by the Central Government. Similarly, the Vice Chancellor had issued the Circular dated 2nd November, 1998, pursuant to the Government Resolution dated 7th September, 1998 and paragraph 15 of the Ordinance 172 has been amended pursuant to the Circular dated 2nd November, 1998 issued by the Vice Chancellor. I am, therefore, of the view that not only the Resolution dated 7th September, 1998 but the above referred Circular dated 2nd November, 1998 and the Ordinance 172 (15) [as amended on 4th May, 2000] are required to be read in light of the conditions prescribed in the above referred communication dated 27th July, 1998. In my view, the Central Government had no intention to include the Agricultural Universities and Agricultural, Medical and Veterinary Science Colleges in the aforesaid scheme nor the same can be said to have been applied by the State Government to the teachers in Agricultural University and Agricultural, Medical and Veterinary Science Colleges. Besides, the reliance placed on Ordinance 172 (15) is wholly misconceived. It is required to be noted that the professional courses are specifically excluded from the purview of Ordinance 172 (15) of the University. It cannot be gainsaid that, 'Medical Science is also a professional course'. No benefit including that of the enhanced age of superannuation under the said scheme or Ordinance 172 can, therefore, be conferred upon such teachers.

Mr. Munshaw has also submitted that the staff of the medical colleges is under the administrative control

of the Health Department of the Government and the instructions issued by the Education Department are not applicable to the staff of such colleges.

The determination of the age of superannuation depends upon the availability of the qualified persons, the necessity of experienced persons and of providing employment to the younger generation, technological development over the recent years, etc. It is only the body of experts which can consider the factors relevant for determining the age of superannuation. The Court of Law sans such expertise cannot and should not interfere in such matters. In the present case, undoubtedly neither the UGC nor any other body of experts has taken decision in this regard. Further, the Central Government also has expressly kept the medical colleges out of the purview of the scheme of the revision of pay scales accepted by it on 27th July, 1998. The University also has specifically excluded the professional courses from the applicability of its Ordinance 172 (15) as amended on 4th May, 2000. The claim of enhanced age of superannuation made by the teachers herein is, therefore, devoid of merits and is hereby rejected.

It is conducive to the interest of administration and the academic atmosphere that a uniform service conditions should be maintained for all similarly situated services, however, it is a matter to be taken up by the body of experts and the Government and requires to be left to the good sense of the Government.

In view of the above discussion, Special Civil Application No. 5111 of 2000 is dismissed. Rule is discharged. Ad-interim relief is vacated. Special Civil Application No. 6265 of 1999 is allowed. The impugned judgment and order dated 16th August, 1999 passed by the Gujarat Affiliated Colleges Tribunal in Application No. 52 of 1999 is quashed and set-aside. Rule is made absolute. The parties shall bear their own costs. The registry shall place copy of this judgment in each of these petitions.

At the request made by the learned advocate Mr. Dave, it is directed that the status quo prevailing as on today in respect of both the teachers shall be maintained till 14th August, 2000.

Prakash*